

FCC MAIL SECTION

BEFORE THE
 JUN 10 1 22 PM '96 FEDERAL COMMUNICATIONS COMMISSION
 WASHINGTON, D.C. 20554

DA 96-879

In the Matter of

Amendment of Section 73.202(b),
 Table of Allotments,
 FM Broadcast Stations.
 (Kula, Hawaii)

)
)
) MM Docket No. 96-127
) RM-8805
)
)

NOTICE OF PROPOSED RULE MAKING

Adopted: May 24, 1996

;Released: June 7, 1996

Comment Date: July 29, 1996

Reply Comment Date: August 13, 1996

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed by Sonia A. Humphrey ("petitioner") seeking the allotment of FM Channel 244A to Kula, Hawaii, as that locality's first local aural transmission service. Petitioner states her intention to apply for Channel 244A if it is allotted to Kula, as requested.

2. In support of the proposal, petitioner states that an outlet for local self expression would greatly benefit Kula since the nearest broadcast facility is located 10 kilometers from Kula. Petitioner avers that the health and safety of Kula's residents would be heightened by having a local broadcast facility to warn of emergency conditions created by severe weather or other health hazards.

3. Section 307(b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, requires the Commission to allot channels "... among the several States and communities." The Commission has defined "communities" as geographically identifiable population groupings. Generally, if a community is incorporated or is listed in the U.S. Census, that is sufficient to demonstrate its status. In this instance, Kula is not credited with a separate population listing in the 1990 U.S. Census¹, but rather the population attributed to it therein (pop. 8,021) is that of the Kula

¹Kula is listed in the Rand McNally Commercial Atlas and Marketing Guide, ("Atlas") which attributes it with a population of 2,000. However, mere geographic location is not sufficient to establish "community" status. See, Vinville, Mississippi, 48 FR 5974 (1983), and Hannibal, Ohio, 6 FCC Rcd 2144 (1991). Additionally, although the Atlas reflects the existence of a zip code and post office for Kula, neither of those components are sufficient to establish "community" status. See, Graham, Washington, 7 FCC Rcd 1676 (1992); Jackpot, Nevada, 6 FCC Rcd 4207 (1991); and Coker, Alabama, 43 RR 2d 290 (1978). No indication of Kula's incorporation or its existence as a census designated place "CDP" is given in the Atlas.

Division of Maui County.² Therefore, petitioner should provide evidence to demonstrate that Kula is incorporated, or that it contains other indicia of a community such as a newspaper, social, economic or cultural organizations, municipal services, or governmental units that identify themselves specifically with Kula. See, e.g., Gretna, et al., Florida, 6 FCC Rcd 633 (1991); Oak Grove, Florida, 5 FCC Rcd 3774 (1990); Statenville, Georgia, 5 FCC Rcd 2685 (1990); and East Hemet, et al., California, 4 FCC Rcd 7895 (1989).

4. We believe the petitioner's proposal to provide a first local aural transmission service to Kula, should it ultimately be deemed a community for allotment purposes, merits further consideration. Therefore, as indicated infra, we will invite comments on the proposal.

5. A staff analysis has determined that Channel 244A can be allotted to Kula consistent with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules without a site restriction at coordinates 20-46-00 and 156-20-00.

6. Based upon the above, we solicit comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, to include Kula, Hawaii, as follows:

City	Channel No.	
	Present	Proposed
Kula, Hawaii	--	244A

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

8. Interested parties may file comments on or before July 29, 1996, and reply comments on or before August 13, 1996, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, as follows:

²Based upon U.S. Census data, a census county division ("CCD") is a geographical area that has been defined for the purpose of gathering data for inclusion in the Census. Further, the Census Bureau defines a CCD as having no legal function nor is it a governmental unit. Moreover, the boundaries of a CCD are usually delineated to follow visible features and in most cases coincide with census tract or block numbering area boundaries. Additionally, CCD's are named based on a place, county, or familiar local name that identifies its location. Cf. Hollywood and California, Maryland and King George, Virginia, 3 FCC Rcd 4043 (1988) (area comprised of collective Census Enumeration Districts "CED's" does not constitute a single community for allotment purposes).

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9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

10. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

MM Docket No. 96-127
MM-8805

1. Pursuant to authority contained in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room 239), at its headquarters, 1919 M Street, N.W., Washington, D.C.